APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,356	07/29/2003	Kenji Ishida	2552-000056	6234

			EXAMINER
27572 7590 02/06/2006			WARREN, DAVID S

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ART UNIT	PAPER NUMBER
2837	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _29 July 2003_.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-12_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-12_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _29 July 2003_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☒ All b) ☐ Some * c) ☐ None of:

        1. ☒ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _7/29/03_.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

2.   Claims 1 – 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the claims, the phrase "responsive to it" is ambiguous. It is not clear as to what is meant by "it" (e.g., the determining device, the control codes, the musical composition, a changing musical image, etc. could all be interpreted as "it"). Clarification is required.

3.   Regarding claims 5 – 7, 9, 10, and 12, the Applicant uses the word "acoustics" in such a way that differs from that accepted in the art. Typically, "acoustics" refers to sound (or the physics of sound waves). Perhaps the Applicant means "audio" or "effects" (e.g., reverb, volume, tone, etc.). Clarification is required.

4.   In the claims, it is difficult to understand what is meant by "a notifying device that notifies distributable standard musical composition data...." How does one notify data? Clarification is required.

5.   In the claims, the phrase "standard musical composition data" is not clearly understood. Presumably, the Applicant may mean MIDI data (or standard MIDI file). But, typically, MIDI data is not distributable. Perhaps the Applicant means MP3 (or any compression format). Clarification is required.

6.   In the claims, it is not clear what is meant by a "musical image." Presumably, this

means a audio representation. Or perhaps a graphical representation of an audio (or

MIDI or MP3) file. Clarification is required.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1, 3 – 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being

anticipated by Shimatani, et al. (JP Publication No. 10-260681). Regarding claims 1

and 4, Shimatani discloses the use of determining if control codes have changed

(paragraph [0019] – "discriminates" is equivalent to "determining") and a re-writing

device to re-write musical composition data so that the composition state is constant

(paragraph [0011] – "no sense of incongruity" is equivalent to "constant"). Regarding

claim 3, Shimatani discloses the use of making volume constant (paragraph [0019]).

Regarding claims 5 and 6, Shimatani discloses that data is re-written only for the "same

kind" of data (paragraph [0013]). The Examiner interprets this (see §112 rejection

discussed supra) to mean control codes of a certain type are contained in the source file

and that that particular type of control code is held constant (Shimatani uses volume

control codes). Regarding claim 7, Shimatani discloses the use of determining that

control data is contained in the source file (discussed supra) and if that control data has

changed to delete it (paragraph [0019] – "eliminate" is synonymous with "delete").

Regarding claim 10, as stated supra, Shimatani discloses the use of determining if

control data changes (e.g., volume by user input), and if so, then re-writes the control

data so that the entire composition has the same (i.e., constant) volume – see

paragraphs [0026] through [0030]. Regarding claims 8 and 11, as best as can be

understood (see §112 discussed supra), as long as Shimatani detects changes in the

source data and re-writes that data, the Examiner will interpret this (albeit questionably)

to mean "notifying" the data to be changed.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani

in view of Cakewalk (Cakewalk Professional for Windows 2.0. User's Guide. 1992). The

teachings of Shimatani have been discussed supra with respect to independent claim 1.

Regarding claim 2, Shimatani does not teach the use of controlling, determining

changes in, nor re-writing tempo data control. The Cakewalk User's manual discloses

images of volume (pages 72 and 73 – in MIDI implementation "velocity" is synonymous

with "volume") and images of tempo (pages 105 – 108) wherein the image may be

changed and the device controlled in accordance with the changed image.   It would

have been obvious to one of ordinary skill in the art to combine the teachings of

Shimatani and the Cakewalk User's Manual to obtain a device maintains constant

control codes on the basis of a detected changed image. The motivation for making this

combination is taught by Shimatani, such a device would allow a user to avoid "a feeling

of physical disorder" by making the music all of a similar tempo and/or volume (see

Shimatani's Abstract).

11.   Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Shimatani in view of Beach et al. The teachings of Shimatani have been discussed

supra with respect to independent claims 7 and 10. Shimatani discloses the use of a

music editing apparatus to edit control codes to permit a "constant" output of volume.

As best as can be understood (see §112 rejection discussed supra), Shimatani does not

disclose the use of providing an editing apparatus to be controlled by the motion of a

user. Beach et al. discloses that it is well known to modify music in accordance with a

motion detecting apparatus having a transmitter (see figs. 1 and 2). It would have been

obvious to one of ordinary skill in the art to combine the teachings of Shimatani with

those of Beach to obtain a editing device controlled via a motion detection device. The

motivation for making this combination is to provide means to manually and remotely

control various elements of music (such as tempo and/or volume). The Examiner

acknowledges that Beach seeks to control only a single note. However, the claim

language is difficult to understand, the single controlled note of Beach is being

interpreted by the Examiner to be "musical composition reproduction control codes for controlling musical composition reproduction."
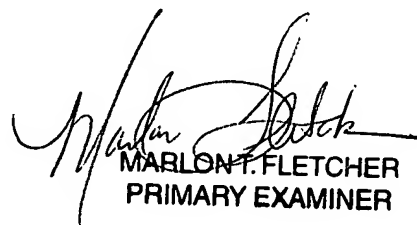
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on 571-272-2001 ext 33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw

MARLON T. FLETCHER
PRIMARY EXAMINER